

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DELGADO, : Docket #19cv11764  
Plaintiff, :  
- against - :  
DONALD J. TRUMP FOR PRESIDENT, : New York, New York  
INC., et al., : January 11, 2023  
Defendants. : CASE MANAGEMENT  
----- : CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Calling case 19cv11764, Delgado versus Trump for President. Beginning with counsel for plaintiff, please make your appearance for the record.

MR. DANIEL KIRSCHBAUM: Daniel Kirschbaum from the Derek Smith Law Group for plaintiff, good afternoon.

HONORABLE KATHARINE H. PARKER (THE COURT): Good afternoon.

THE CLERK: And counsel for the defendants, please make your appearance for the record.

MR. JARED BLUMETTI: Jared Blumetti of LaRocca Hornik Rosen & Greenberg on behalf of the defendants, good afternoon, Judge.

THE COURT: Good afternoon. Okay, so we are here for a case management conference, discovery is set to end, fact discovery is set to end the end of this month and expert discovery is scheduled to end by March 31<sup>st</sup>. And as I understand it, plaintiff's only potential expert is a mental health professional?

MR. KIRSCHBAUM: Currently, Your Honor, I'll officially reserve the right to change my mind and say a damages expert is needed but I don't think it likely.

THE COURT: Okay. And in terms of experts, are there any experts that defendant is currently

1  
2 contemplating or would it just be potentially a  
3 rebuttal expert?

4 MR. BLUMETTI: Potentially rebuttal, Judge.

5 THE COURT: Okay. Now as I understand it,  
6 neither side has taken any depositions even though I  
7 had ordered that depositions be scheduled to take place  
8 in December and January, do you have dates set aside  
9 for depositions?

10 MR. BLUMETTI: That's correct, Judge. We had,  
11 Mr. Kirschbaum and I had circulated potential dates for  
12 depositions, we were scheduled or tentatively scheduled  
13 to take Ms. Delgado's deposition in the third week of  
14 December, Mr. Kirschbaum expressed a concern about  
15 coming into today's settlement conference with only  
16 having taken the plaintiff's deposition as opposed to  
17 all the party depositions. That kind of stalled things,  
18 we had some discovery issues which we have a motion to  
19 compel prepared, if Your Honor would like to hear it,  
20 on some discovery issues. After that we do believe  
21 there would be a brief extension of the fact discovery  
22 deadline to be necessary after which we will get firm  
23 deposition dates on the calendar immediately. We  
24 understand that, you know, it needs to move forward and  
25 we are prepared to move forward quickly.

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THE COURT: Okay, so what I want to have a complete understanding of is what has been produced document wise by each side first. So what has plaintiff produced?

MR. KIRSCHBAUM: Your Honor, everything that plaintiff reasonably believed was in her possession, I pushed her to search thoroughly for electronica and papers and I submitted everything I had to the other side.

THE COURT: What did that include, can you just give a general description?

MR. KIRSCHBAUM: Sure, text messages, emails about her job attempts with campaigning in the White House and the pack of messages with the various, with defendants and the various other members of the Trump -

THE COURT: Including through messaging apps?

MR. KIRSCHBAUM: Several, yes.

THE COURT: Okay.

MR. KIRSCHBAUM: And then random other documents including her job application materials and the settlement materials, the settlement that was --

THE COURT: The various drafts and exchanges concerning the settlement agreement that's at issue in

1  
2 the case.

3 MR. KIRSCHBAUM: Correct, Your Honor.

4 THE COURT: Okay, any other categories?

5 MR. KIRSCHBAUM: I'm maybe forgetting  
6 something, I don't think so, it was mostly emails, a  
7 few news articles that plaintiff had been collecting in  
8 her file. I think that's basically it.

9 THE COURT: Okay. And from plaintiff's -- let  
10 me actually hear next what defendant, just the  
11 categories that defendant has produced.

12 MR. BLUMETTI: A very fulsome production,  
13 Judge, thousands and thousands of pages of ESI based on  
14 an ESI search that was premised on the plaintiff's own  
15 terms and connectors, an amalgamation of the  
16 plaintiff's and the campaign's, so a lot of ESI text  
17 messages. Also the, a lot of the ESI and Word docs  
18 pertaining to the purported prior settlement, and that  
19 is the main categories as well. Some text messages from  
20 the individual defendants but very minor in terms of  
21 the scope. The vast majority was the ESI emails.

22 THE COURT: Emails?

23 MR. BLUMETTI: From the campaign server  
24 emailing plaintiff, between plaintiff and workers on  
25 the campaign and the transition team, plaintiff and

1  
2 Jason Miller, plaintiff and the individual defendants,  
3 et cetera.

4 THE COURT: Okay. And there has been some  
5 discussion of lists, lists for possible candidates for  
6 White House jobs?

7 MR. BLUMETTI: Yes, that was produced as well.

8 THE COURT: Who, did both sides produce those?

9 MR. BLUMETTI: It was produced from defendants  
10 to the plaintiff, it was located on the campaign server  
11 so we produced it to the plaintiff.

12 THE COURT: Okay. And so it's on the campaign  
13 server so do you, who are the custodians of those  
14 lists, who are the authors of the lists, if you know?

15 MR. BLUMETTI: Campaign workers, you know,  
16 they were just a lot of, attached to emails with  
17 donaldjtrump.com domain finishes, some personal email  
18 addresses because some of the individual defendants,  
19 for example, used their personal email addresses at the  
20 time, so it's hard to track down a specific custodian.  
21 It certainly came off the campaign server would be the  
22 root custodian.

23 THE COURT: Okay, so the campaign does not  
24 have access to White House documents, I assume?

25 MR. BLUMETTI: Not at all.

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THE COURT: Okay.

MR. BLUMETTI: Nor the transition team documents, other than transition team documents that flowed through the campaign server.

THE COURT: Okay. Okay, so from plaintiff's perspective are there any missing documents or outstanding documents?

MR. KIRSCHBAUM: Again, Judge, as we've discussed, there was a, seems to be a missing link here. We have plenty of documents where there were there were reassurances, I realize they are not legally binding, they're not a full contract, whatever, but there were written assurances that A.J. Delgado was going to have a significant position in the White House, a communications position, and outreach position, whatever, and then all of a sudden she does not. And there is no document wherein any defendant or any person among the custodians says to any other person take A.J. off the list, here's why, or in light of her tweets she's off the --

THE COURT: So you would expect there to be some emails at the campaign or among the defendants about whether to offer her a job formally, or to withdraw an offer, or to decide not to extend an offer,



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one of the, something in that area?

MR. KIRSCHBAUM: Yes, Your Honor.

THE COURT: Okay.

MR. KIRSCHBAUM: I wouldn't limit it strictly to emails, there might be a Word document in a memo, there might be a text message --

THE COURT: Or a text message or what have you. So let me ask defense counsel, did you search for any kind of communication or other document that would concern offering, not offering or withdrawing an offer to Ms. Delgado?

MR. BLUMETTI: Putting aside the word offer, you know, we had the position that our client could not have offered or, you know, accepted any offer but, yes, search terms were performed, it was some of the plaintiff's own search terms along those lines and, you know, we searched through the server, we produced thousands of pages, those documents don't exist.

THE COURT: Was the word offer used in a search?

MR. BLUMETTI: Yes. I don't know if the word offer, specifically, but certainly her anticipated position that she wanted with the White House, her name, the same date parameters, the same custodians.

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2 THE COURT: Okay, so you were looking for  
3 communications that would explain whether she would go,  
4 wouldn't go and why.

5 MR. BLUMETTI: Right. And --

6 THE COURT: Is that fair to say?

7 MR. BLUMETTI: Right but, you know, those  
8 documents don't exist on the server, you know, we  
9 performed a good faith search. We can show the hit  
10 report, we can show everything, but we just don't have  
11 it, I mean the documents don't exist.

12 THE COURT: Okay.

13 MR. KIRSCHBAUM: Judge, I'm being sincere, I  
14 credit Mr. Blumetti's representations that they did, in  
15 fact, produced plenty of documents, it was a reasonably  
16 -- reasonably fulsome production. But I just want to be  
17 clear, like my impression in communicating with Mr.  
18 Blumetti, and he can clarify, is that they religiously  
19 mechanically applied my search terms and my custodians  
20 and that's great. But they had an obligation, I mean I  
21 had more document requests beyond just applying search  
22 terms, I had requests for those forms of documents, I'm  
23 not sure they independently came up with their own  
24 terms or came up with their own search ideas or  
25 performed anything beyond just mechanically --

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THE COURT: So when a defendant is searching for documents, including ESI, the defendant has the obligation not just to apply the search terms, but to conduct a reasonable search for documents responsive to the plaintiff's document requests, separate and apart, did you do that?

MR. BLUMETTI: Of course, yes, and I believe I indicated before, we had our own search terms in addition to the search terms that were proposed by counsel which were also applied. There was certainly a good faith search done here. I don't know what particular document they're looking for. I can't prove a negative. I don't know if Ms. Delgado has a copy of any document that she says was not in our production that she finds suspicious. There's been no indication of that so I'm essentially searching for a negative. I don't know what else to do other than say that we believe we complied with our Rule 26 obligation.

THE COURT: I mean this is all within a relatively short period of time, right?

MR. BLUMETTI: Correct.

THE COURT: I mean basically November into January, right? So, okay, and so what you're looking at is the campaign servers and the personal emails or

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social media or apps that any of the relevant people might have used, is that correct, Mr. Blumetti?

MR. BLUMETTI: Correct, that is what was searched.

THE COURT: Okay. So it may not exist, that may not exist.

MR. KIRSCHBAUM: I find that hard to believe, Judge, but I concede that it's possible that they with a wink and a nod to said to each other let's not put this in writing, let's talk offline about why we're not going to hire her. That's quite plausible, possible.

THE COURT: That certainly could have happened. That certainly could have happened, especially it was a very quick transition and there were a lot of jobs being discussed and people coming over so it's possible that it was verbal and I guess you can explore that in depositions, right?

MR. KIRSCHBAUM: Yes, Your Honor, correct.

THE COURT: Okay. Are there, besides that, are there any other categories of documents that you believe are missing or outstanding?

MR. KIRSCHBAUM: Well, judge, just in terms of categories of documents, we had requested the personnel files of the named defendants minus, minus any highly

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2 personal, highly confidential financial or health  
3 related documents. So --

4 THE COURT: Why do you need the personnel  
5 files of the individual defendants?

6 MR. KIRSCHBAUM: Because presumably there  
7 would be something in there regarding interpersonal  
8 conflicts with other, or complaints against them from  
9 other people on the campaign.

10 THE COURT: Well that's a different thing, a  
11 complaint against them versus a personnel file, right?  
12 A personnel file by the campaign, they won't have White  
13 House personnel files obviously, the campaign doesn't  
14 have.

15 MR. KIRSCHBAUM: I sought the latter, too,  
16 Your Honor, but the point is like I think HR files are  
17 not always synonymous with complaints, there's  
18 sometimes other stuff in there that can bear on a  
19 person's credibility, on a person's biases, on, you  
20 know, whatever that is. It's a standard request, I  
21 don't think it's unreasonable to ask for it.

22 THE COURT: What is the, what is defendant's  
23 position?

24 MR. BLUMETTI: The response was is that, and  
25 they put in their interrogatory responses, the

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individual defendants, Mr. Priebus and Mr. Spicer, my client, they never worked for the campaign, they only worked for the transition team and the RNC, we don't have a personnel file for them.

THE COURT: Okay.

MR. BLUMETTI: Which was what we represented in their sworn interrogatory responses.

THE COURT: Okay. And what about Bannon?

MR. BLUMETTI: Bannon was limited to his written NDA.

THE COURT: Oh, he only had a written NDA, there was no file?

MR. BLUMETTI: Yeah, exactly right.

THE COURT: Are you aware of any complaints, does the campaign have any personnel related complaints? I mean in general in these kinds of cases what Courts allow is discovery of any performance evaluation or similar kinds of complaints. For example, gender discrimination, pregnancy discrimination, harassment, retaliation, those are the kinds of claims that have been asserted in this matter and are there any such claims that were or complaints that were made about any of the individual defendants to the campaign?

MR. BLUMETTI: Not regarding these individual

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2 defendants. The only other claim that I believe this  
3 Court is even aware of, one of the cases in this Court  
4 was pertaining to an individual named Jessica Denson,  
5 her entire file is public record, she had also made a  
6 gender discrimination claim against the campaign. And  
7 the irony there is, Judge, one of the alleged harassers  
8 on the part of Ms. Denson is a A.J. Delgado, counsel is  
9 well aware of that, that's the only thing we have,  
10 certainly that pertained to that time period.

11 THE COURT: Okay. All right, so are there any  
12 other categories of outstanding documents?

13 MR. KIRSCHBAUM: Of outstanding documents?

14 THE COURT: That's what we're talking about  
15 now, just documents.

16 MR. KIRSCHBAUM: The only other thing I can  
17 think of which Mr. Blumetti has indicated there  
18 shouldn't be, but I'm not -- there are communications  
19 between Donald Trump's PAC and his campaign. In other  
20 words, why Ms. Delgado was denied work for one or the  
21 other because of, in other words, were they  
22 coordinating that she would not get a job with the PAC  
23 because of her conflict with the campaign.

24 THE COURT: Is there a document request about  
25 that?

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MR. KIRSCHBAUM: There was, yes.

THE COURT: Okay, so if there was a document request, I don't know, what was the response to that request?

MR. KIRSCHBAUM: Just to clarify, I phrased it inelegantly, I said any communications between the PAC and the campaign, and Mr. Blumetti, you reasonably said that's way too overbroad --

THE COURT: So what you're looking for is any communications between the PAC and the campaign about Ms. Delgado?

MR. KIRSCHBAUM: Yes, Your Honor.

THE COURT: Is that something that you've looked at, looked for?

MR. BLUMETTI: That was something that would have been caught within the web of our search I believe, you know, I would also say even though we did perform a search on those lines and we didn't find anything, which is not surprising, that's outside the scope of the pleadings. I mean it's not even an allegation about the PAC and not having a job at the PAC, all of this, you know, goes years past the allegations in the complaint anyway. So we don't believe it's relevant in any way. She's not, she



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2 doesn't have any claims against, you know, a wrongful  
3 termination with respect to the PAC or any  
4 communications with the PAC, so I'm not sure how it's  
5 relevant. But I would say that we did search, I know we  
6 searched and there was nothing. Certainly no  
7 communications with the campaign entity from 2016  
8 pertaining to any purported employment with Ms. Delgado  
9 with the PAC in 2017.

10 THE COURT: Okay, what is the theory with the  
11 PAC, I mean it sounds like the search would have turned  
12 up this --

13 MR. KIRSCHBAUM: I take them at their word  
14 that they found nothing, Your Honor, and if you want to  
15 know, I mean just as much as the defendants torpedoed  
16 Ms. Delgado getting a White House position, our take as  
17 they generally also torpedoed her ability to work  
18 anywhere in the Trump world including for PAC, which is  
19 another, you know --

20 THE COURT: What are the acts of retaliation  
21 that you've alleged?

22 MR. KIRSCHBAUM: We've alleged that they  
23 tortuously interfered with and retaliated against her  
24 trying to get, getting a job at the White House, a  
25 communications job from Donald Trump after the

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2 election.

3 THE COURT: I'm just looking at the first  
4 amended complaint for a second.

5 MR. KIRSCHBAUM: The first amended complaint  
6 may not say the PAC in there, in which case, you know,  
7 I'll take Mr. Blumetti's point and consider potentially  
8 amending, but given that there's no evidence --

9 THE COURT: We have a first cause of action  
10 breach of contract relates to the settlement agreement,  
11 promissory estoppel relates to the settlement  
12 agreement, we have the New York Human Rights Law  
13 discrimination, New York --

14 MR. KIRSCHBAUM: Judge, I will say it seems --

15 THE COURT: (continuing) -- Human Rights Law  
16 retaliation and New York City Law discrimination and  
17 retaliation. The ninth cause of action is New York  
18 City Law interference with protected rights. Okay.  
19 And then eleventh cause of action is tortuous  
20 interference with prospective economic advantage, and  
21 you're saying that pertains to more than just  
22 employment at the White House?

23 MR. KIRSCHBAUM: It could, sure. But, again,  
24 I'm not, you know, going to fight on this if Mr.  
25 Blumetti represents that they searched for these

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2 documents and found them, I take him at his word.

3 THE COURT: Okay. Okay, so let me hear from  
4 defendants then, unless there is any other category of  
5 document that plaintiff believes is outstanding?

6 MR. KIRSCHBAUM: Not categories of documents,  
7 Your Honor, we have other disputes about categories of  
8 information but I'll --

9 THE COURT: What are, if you can just  
10 highlight what those disputes are, these are things  
11 that you want that defendants have opposed?

12 MR. KIRSCHBAUM: Yeah.

13 THE COURT: So what's that?

14 MR. KIRSCHBAUM: Well first, there's an issue  
15 of Ms. Delgado is afraid that confidential documents  
16 are being shared with Boris Epshteyn who is a, I'm not  
17 sure what his current position is. And I'm, I've asked  
18 defense counsel to represent in writing that they're  
19 not sharing those in compliance with the  
20 confidentiality order that Your Honor entered.

21 THE COURT: She thinks that there's been a  
22 violation of the protective order?

23 MR. KIRSCHBAUM: Yes.

24 THE COURT: Okay, and on what basis?

25 MR. KIRSCHBAUM: That she's just, she feels

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2 that way based on her (indiscernible) conversations  
3 with other people who --

4 THE COURT: Has somebody said that to her?

5 MR. KIRSCHBAUM: No, but she's, she's been  
6 told that Boris Epshteyn has been privy to all sorts of  
7 Trump legal affairs and even though he's, I think he's  
8 trained as a lawyer so he often comes in as an informal  
9 legal advisor to Trump related disputes, so that's her  
10 understanding is that he's been doing that here, too.

11 THE COURT: Okay, go ahead, any other issues?

12 MR. KIRSCHBAUM: Mr. Blumetti has again said  
13 that that's not so and they've not been sharing with  
14 him.

15 THE COURT: Okay.

16 MR. KIRSCHBAUM: I would feel better if that  
17 was written but --

18 THE COURT: Okay.

19 MR. KIRSCHBAUM: I'm -- oh, actually there was  
20 one other category of documents I forgot, Your Honor,  
21 which is we asked about other people applying for White  
22 House jobs from the campaign and documentation of that.  
23 And that was also objected to.

24 THE COURT: Okay.

25 MR. KIRSCHBAUM: And that's it.

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THE COURT: Okay, what's the basis for  
objecting to that request?

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MR. BLUMETTI: I think it was the way in which  
it was phrased, Judge, and also what we discussed  
earlier in the day, the campaign entity didn't handle  
applications for positions in the White House, that was  
handled by the federal government. And there was a  
whole, another entity against which Ms. Delgado's  
released all claims, the transition team, which was  
charged with identifying potential candidates for the  
White House and we don't have access to any of their  
documents either. As far as the campaign is concerned  
certain campaign employees may have gone on to work in  
the White House but there was no application process  
that flowed through the campaign.

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THE COURT: So what was the application  
process, if you can describe that?

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MR. BLUMETTI: As far as I understand, Judge,  
and as we discussed earlier, it pertained to, you know,  
the transition team identifying potential White House  
employee candidates and those candidates being  
proffered to the federal government and then the  
federal government issuing a standard Form 86  
Questionnaire Clearance paperwork and to the extent

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that they passed that vetting process, they were then offered more of a verbal handshake sort of deal as opposed to a written deal, a job in the White House. This wasn't handled by the campaign in any way.

THE COURT: Was there any kind of confirmatory document issued by the White House, the executive branch of government, that somebody now is in fact working at the White House, what is the closest proxy that someone was offered and received the job?

MR. BLUMETTI: Nothing that I have seen, Judge, and I believe this also would have been captured. For example, we had when we ran our search we caught within that web was the list that we discussed where it had, you know, certain names on there about who could potentially be identified as a candidate. We found that but we didn't find anything beyond that --

THE COURT: So the list, the lists that both sides have referred to are lists are candidates?

MR. BLUMETTI: Correct.

THE COURT: Okay. And is there a way of ascertaining within the defendants' documents which of those, which candidates on the list got a job? I mean is there, is it public who worked at the White House?

MR. BLUMETTI: As far as I know that would be

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2 limited to testimonial discovery, you know, who of  
3 which of those names actually worked in the White  
4 House. I don't have any documents in the campaign  
5 server certainly, I don't have access or any documents  
6 from the federal government. Counsel, myself, knows  
7 what the general public knows, you know, what's in the  
8 media in names and reading in that manner --

9 THE COURT: Okay.

10 MR. BLUMETTI: But nothing formal by way of  
11 discovery.

12 THE COURT: Okay.

13 MR. KIRSCHBAUM: So to be clear, my request  
14 was worded suitably broadly, distinctly informal  
15 communications about White House jobs or what have you,  
16 not just limited to formal standard form --

17 THE COURT: Sure, I understand, that's what  
18 I'm sort of trying to understand, is there anything  
19 that would be any kind of document that would reflect  
20 that somebody was going to be employed or had been  
21 offered a job or given a job at the White House that  
22 would be within the campaign's possession?

23 MR. BLUMETTI: Beyond that list, no, Judge.

24 MR. KIRSCHBAUM: What I've seen in the  
25 production, Judge, has been, as Mr. Blumetti alluded to

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2 before, there have been emails back and forth among  
3 various people in high places including Mr. Miller  
4 about here's our roster. It wasn't a list of here are  
5 potential candidates, let's pick one of the following  
6 five, it was a roster, here is who we've slated for the  
7 following jobs and --

8 THE COURT: Right, but Miller wasn't the  
9 decision maker, he's not even a defendant in this case.

10 MR. KIRSCHBAUM: No, there were other people  
11 involved in this communication.

12 THE COURT: Okay.

13 MR. KIRSCHBAUM: But it was just an FYI or  
14 here's, this is my list, what do you think. And there  
15 were slots and Ms. Delgado was allocated a position  
16 like at some point it was Hispanic Outreach  
17 Coordinator, at one point it was a Senior Advisor,  
18 other people were allotted other positions, it was not  
19 a list, a roster, a slate of potentials, it was a, you  
20 know, a planned staffing tree.

21 THE COURT: And did everybody on those lists  
22 get hired?

23 MR. KIRSCHBAUM: I don't know, that's --

24 THE COURT: Does the campaign have any way of  
25 ascertaining that?



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MR. BLUMETTI: Not in formal documents, I'm sure that certain witnesses can testify to who actually worked in the White House from that list, but not an actual roster of who ultimately became formally employed, no.

THE COURT: Okay, so let me ask defendant, are there outstanding documents that defendant believes still need to be produced by plaintiff?

MR. BLUMETTI: Yes, the motion to compel that I referenced earlier, Judge, it breaks down into just issues with respect to limited interrogatory and document responses. They kind of cover the same topics. It's, the first named topic would be the settlement agreement that plaintiff entered with TFA.

THE COURT: The co-defendant.

MR. BLUMETTI: With the co-defendant.

THE COURT: Former co-defendant.

MR. BLUMETTI: Against whom plaintiff has now released all claims. So we made an interrogatory number 18 to that, to that -- to that point or that issue and we also made document demands. The plaintiff objected outright to providing any of that discovery. We've met and conferred on this issue and this was the subject of our impending motion to compel. We believe this

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2 discovery is highly relevant, for one thing it is  
3 potential grounds for summary judgment on most, if not  
4 all her employment claims, as these claims arose during  
5 her employment with TFA against whom she's released all  
6 claims. You know, Mr. Spicer, Mr. Priebus, the  
7 individual defendants in this case, both worked for the  
8 TFA during this relevant time period of allegations.  
9 So we certainly believe that we're entitled to discover  
10 the scope of any release contained --

11 THE COURT: This is the transition team?

12 MR. BLUMETTI: The transition team, right.

13 THE COURT: So people were on a separate  
14 payroll for the transition team --

15 MR. BLUMETTI: Right.

16 THE COURT: And the plaintiff was on that  
17 payroll.

18 MR. BLUMETTI: Correct.

19 THE COURT: So she was on the campaign payroll  
20 and then she was on the transition payroll.

21 MR. BLUMETTI: Correct, and her allegations  
22 with respect to discrimination and retaliation, you  
23 know, pertain to December of '16 which was necessarily  
24 after the election, after the campaign was already  
25 winding down --

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THE COURT: I'm sorry, say that date again?

MR. BLUMETTI: December of 2016, if you --

THE COURT: That's when she was employed by the transition team.

MR. BLUMETTI: The transition team, and if you peruse the allegations in the first amended complaint, all the allegations of discrimination and retaliation and hostile work environment find their genesis in that month, which was after the election, after the campaign entity was kind of, you know, served its purpose. So this is the time when the individuals were working for the transition to fill spots in the incoming administration for the federal government.

THE COURT: Were any of the individual defendants, if you know, on the payroll of the transition team?

MR. BLUMETTI: I understand that Mr. Priebus and Mr. Spicer were.

THE COURT: Okay.

MR. BLUMETTI: As was the plaintiff. So plaintiff entered into a settlement agreement with TFA in exchange for a monetary payment and we believe mutual releases. You know, the scope of those releases might very well cover plaintiff's claims against Mr.

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2 Spicer and Mr. Priebus by virtue of their status as an  
3 agent or employee of the TFA. So we could have a  
4 summary judgment motion on that alone. I believe we  
5 indicated earlier that also if there was a monetary  
6 payment which we're almost positive there was, that  
7 could serve to offset the plaintiff's damages as well.  
8 So we believe we're certainly entitled to these  
9 settlement agreement docs with the TFA.

10 THE COURT: Okay, and what is the plaintiff's  
11 view on why this is not relevant or producible?

12 MR. KIRSCHBAUM: Your Honor, it's, I actually  
13 touched on this in my letter, my pre-conference letter,  
14 like there are strict confidentiality measures in place  
15 in that agreement because, for this reason, that Ms.  
16 Delgado is afraid of sharing too much with the other  
17 defendants. They, I've mentioned, I've discussed Mr.  
18 Blumetti that we will stipulate to, when it comes to  
19 it, to the amount, and any jury verdict could be offset  
20 by that, and he admitted that was an intriguing idea.

21 But in terms of the other issues, the release  
22 issue, as I mentioned in my letter, I believe it  
23 specifically excludes Mr. Priebus, Mr. Spicer, Mr.  
24 Bannon, and anyone else who could be of issue here. So  
25 it is, it's written in black and white that they are

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2 not released by that agreement.

3 THE COURT: So why couldn't you produce a  
4 redacted version that showed the release language?

5 MR. KIRSCHBAUM: I can certainly --

6 THE COURT: I mean I have had other cases  
7 where part of the defendants settled and other  
8 defendants wanted the agreement and I have ordered them  
9 to be produced or produced in redacted form because it  
10 is relevant, or at least portions are relevant, maybe  
11 not all the provisions are relevant. But my view is  
12 that there doesn't need to be motion practice on this.  
13 I think that it is, the release language, in  
14 particular, is relevant now to the issue of liability  
15 and that that, there is nothing unusual about release  
16 language, everybody pretty much knows what release  
17 language looks like and there is nothing particularly  
18 secret about it. And it certainly is, is relevant.

19 In terms of the amount, that is something that  
20 could be produced on an attorneys' eyes only basis  
21 until after trial. But what I, what I'm hearing is  
22 that that amount defendants say would be an offset, is  
23 that what I'm understanding you to day?

24 MR. BLUMETTI: Correct, Judge. And just for  
25 illustration purposes it makes more logical sense to me

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2 at least in the context of the breach of settlement  
3 agreement claims, the TFA was a party to that original  
4 purported settlement.

5 THE COURT: Um-hmm.

6 MR. BLUMETTI: So to the extent that the  
7 number was 1.2 and the TFA paid \$200,000 in settlement  
8 in a breach of contract action, that --

9 THE COURT: But why does it matter now, I mean  
10 it doesn't really go to liability. So I'm wondering,  
11 you know, I don't think it's particularly secret really  
12 and to the extent it's an offset I think if defendant  
13 is evaluating damages, evaluating any potential  
14 offsets, the number, of course, is relevant to that.  
15 So I think under Rule 26 which has a very broad  
16 definition of relevance for purposes of discovery, that  
17 these provisions are things that should be produced to  
18 the defendants.

19 Now, I don't think the other provisions of the  
20 settlement agreement are particularly relevant, I  
21 haven't heard any reason why any other provision should  
22 be -- should not be redacted. And I don't, at least  
23 for now what I'm going to do is I'm going to order  
24 production of the redacted version on an attorneys'  
25 eyes only basis. Because what I've, the representation

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2 that has been made is that the release does not release  
3 the defendants that remain and as soon as you see that  
4 you'll know that you don't have the argument, you know,  
5 have that argument and there is no reason that you need  
6 to, the campaign or the individual defendants need to,  
7 to see that language. But I think it is relevant and  
8 then the parties can argue later whether or not it  
9 would be admissible for any purpose.

10 MR. BLUMETTI: Understood, Judge.

11 MR. KIRSCHBAUM: So for right now we redact  
12 everything but the release provision?

13 THE COURT: The release provision and the  
14 number. And it will be attorneys' eyes only.

15 MR. KIRSCHBAUM: Okay, because the reason I  
16 ask is my client is fearful that the number will be  
17 released to the defendants if it's shared.

18 THE COURT: I'm ordering it to be attorneys'  
19 eyes only and I will put that in an order after this  
20 conference, and if that is violated that's a violation  
21 of a Court Order, okay? So it should not be shared, it  
22 should just be attorneys' eyes only basis, everything  
23 redacted except those two provisions.

24 MR. KIRSCHBAUM: Okay.

25 THE COURT: So there is not a need for motion

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practice on that.

MR. KIRSCHBAUM: Okay.

THE COURT: What is the other issue?

MR. BLUMETTI: Another main category would be the documents concerning the matter entitled *John Denoffville* (phonetic) versus *Arlene Delgado*. This was the Florida court case, the plaintiff refuses to provide any documents which we understand are in her possession regarding this proceeding. We believe that this, these documents and discovery is highly relevant and will be explored at the plaintiff's deposition. We understand that the plaintiff engaged in a campaign, pun intended, of, quote, "malicious harassment" against Mr. Denoffville in and around 2012 which included her sending dozens and dozens of emails to him in which she made countless sexist and racist statements, very colorful and inappropriate statements. The reason that this is relevant, Judge, is not because we're making any argument that plaintiff somehow welcomed any alleged conduct towards her or during her time period with the campaign, but rather that the, the words and her conduct in that proceeding and its final disposition, including the permanent injunction that was assessed against her by a Florida Court in 2012



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2 necessarily means that she could not have passed the  
3 strict vetting process to receive White House  
4 employment.

5           As Your Honor is aware, the vast majority of  
6 the plaintiff's damages in this case pertain to lost  
7 employment with the White House and speculative future  
8 employment had she obtained an employment with the  
9 White House. All this discovery will show that she  
10 could have never obtained any position the White House  
11 because of the final disposition of this proceeding and  
12 her conduct in connection with that proceeding. So we  
13 believe we are certainly entitled to view this docket,  
14 view the documents that Ms. Delgado has in her  
15 possession, including, not limited to, discovery,  
16 affidavits, Court opinions to the extent that they're  
17 not publicly available, all of which will be explored  
18 at Ms. Delgado's deposition and assessed against  
19 Standard Form 86 which is the security clearance  
20 required for any person to work in the White house, and  
21 to use those documents to show and argue that she could  
22 not obtain any position.

23           THE COURT: Why are, why is the scope of what  
24 you're asking all relevant? Because as I understand it,  
25 what would happen in a background check is that there

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would be a criminal record search --

MR. BLUMETTI: Right.

THE COURT: And a search for judgments against a person. And so what would come up would be the permanent injunction. I take it that you actually have a copy of that, that's a public record?

MR. BLUMETTI: We don't have a copy of it, we have certain records from predecessor counsel, Kasowitz Benson Torres, but we don't have a copy of the actual final disposition. I believe --

THE COURT: Is that not knowable?

MR. BLUMETTI: I believe it's sealed, I tried to go and get it myself and I've been unable to. I understand that Ms. Delgado has it and, you know, we wouldn't be looking for any privileged documents obviously, we would be looking for --

THE COURT: But why do you need the rest of the scope of stuff, why, isn't -- in terms of an employment decision, right, if, isn't that made based on the nature of the conviction or the charge, if the charge is there was a finding of harassment and, therefore, there's a permanent injunction, isn't, what more is needed or are you saying that as part of the process they don't just look at the actual conviction

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but they look behind it in some way?

MR. BLUMETTI: They would look behind it and also, you know, I think that the lead argument that I would make on relevance is what I have already articulated. But part and parcel of this case, Ms. Delgado is alleging that certain comments that were made to her by, among others, Jason Miller, you know, Sean Spicer, you know, were so offensive to her as part and parcel of her hostile work environment claim, and we are entitled to use the plaintiff's own words against her that she used --

THE COURT: Have you talked -- have you talked to the individual who obtained the injunction against her?

MR. BLUMETTI: I have not, no.

THE COURT: Have you tried to subpoena him?

MR. BLUMETTI: I have not, I thought it would be more prudent to go through the plaintiff in this action.

THE COURT: I mean because you are entitled to, of course, seek any information you want from that individual. I don't know if he's within the jurisdiction of this Court's subpoena power.

MR. BLUMETTI: I believe he lives in Florida,

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and also I just thought, you know, for --

THE COURT: Well normally you first go through the parties --

MR. BLUMETTI: That's exactly why I'm going through the parties first.

THE COURT: Normally you first go through the parties. But on what basis are you saying that the White House would look beyond the actual finding of a Court because there's a lot of allegations but, you know, allegations are allegations, what, the finding is a more dispositive kind of thing that would, I would think, be most impactful in a decision making process.

MR. BLUMETTI: Well here, Judge, we have an individual who is seeking a position in the Communications Department and part of her job would be communications and messaging. So, you know, discovery where there's emails where the plaintiff is using this language towards numerous third parties, you know, goes part and parcel to a decision. I'm not in the position to say that the federal government would just see injunction, you're in or you're out, I would like to imagine it's more gray than that and, you know, pull back the lens a little bit and see what happens. And once you do pull back that lens and you see the

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language and you see the conduct in issue in this case,  
it would have made it a no brainer.

THE COURT: But that was ten years before,  
right, it was --

MR. BLUMETTI: It was, it would have been only  
four years before --

THE COURT: When did this happen?

MR. BLUMETTI: 2012, so it would have been  
four years before her employment with the campaign  
which would, and the Standard Form 86 pertains to any  
conduct that goes back seven years prior to employment.

THE COURT: Right.

MR. BLUMETTI: So it's certainly relevant from  
a temporal standpoint as well.

THE COURT: It's within the seven year period.  
What does plaintiff say about this?

MR. KIRSCHBAUM: Your Honor, this is a  
complete and total fishing trip, a trawl, scraping the  
bottom of the ocean, designed to embarrass the  
plaintiff. I mean there's no legitimate reason to go  
through, as Mr. Blumetti, himself, said, every piece of  
paper from the entire file of anything having to do  
with this case. If, as a compromise we could stipulate  
to the fact that there was an injunction entered, I see

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2 his point about that. I reiterate what I said to you  
3 back there which is that the Trump White House was a  
4 motley crew of people with all kinds of questionable  
5 backgrounds, with arrest records, with domestic abuse  
6 records, with all kinds of records and somehow they got  
7 past the vetting at the White House. So it's not a  
8 clear --

9 THE COURT: Disqualifier.

10 MR. KIRSCHBAUM: Yes.

11 THE COURT: I understand. I understand that.  
12 I think, again, Rule 26 has a broad relevance scope and  
13 the background checks are supposed to turn up things  
14 like these kind of judgments. So I do think it is the  
15 final decision or injunction, that document or  
16 documents, I don't know if there is a, you know, a  
17 judgment and then an injunction, but if there was a  
18 final finding and final disposition that I believe  
19 should be produced. I think that is relevant because it  
20 is relevant to the defense that the defendant is making  
21 and both parties will have an opportunity to make an  
22 argument that it would not be disqualifying. But it  
23 certainly would be something that would be discovered  
24 in the course of a standard background check and  
25 considered in the course of a background check. And I

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haven't heard enough from the campaign to convince me that all of the other details need to be produced at this time.

So what I'm going to order is production of the final disposition and injunction. And if it is, in fact, currently sealed, that can be produced pursuant to the protective order in this case.

MR. BLUMETTI: I appreciate your ruling, Judge, I just want to clarify that on the final disposition, does that include any written opinions by the Court?

THE COURT: Yes.

MR. BLUMETTI: You know, explaining the decision?

THE COURT: Yes.

MR. BLUMETTI: Okay.

MR. KIRSCHBAUM: Judge, my understanding I that this was an injunction issued as a standalone thing --

THE COURT: Okay, so there's no, there's no written decision?

MR. KIRSCHBAUM: Yeah, the plaintiff was apparently not aware it was even going on, it was done ex parte and then all of a sudden she was served with

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an injunction.

THE COURT: Okay, so then there is just the one court document.

MR. KIRSCHBAUM: I assume so, Your Honor.

THE COURT: Okay.

MR. KIRSCHBAUM: But can I, Mr. Blumetti mentioned something else before that has now intrigued me which is he said we have some documents that we got from Kasowitz, from the former counsel for the Trump campaign, I don't believe those were produced in discovery and I think they're squarely relevant. If he's claiming that those were part of the reason why her damages should be limited, or why she wouldn't have gotten a job or what have you, I think we're entitled to see whatever documents that Kasowitz disclosed to --

THE COURT: Well certainly any documents that you're intending to rely on or that are within the scope of the document requests need to be produced or alternatively put on a privilege log.

MR. BLUMETTI: To the extent that those were not produced they will be.

THE COURT: Okay.

MR. BLUMETTI: And I just wanted to clarify also that, you know, this issue about the final



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2 disposition of the proceeding, when I go on the  
3 website, Federal Court, and admittedly I'm not as  
4 familiar with their dockets as I am the New York  
5 Courts, there seems to be a litany, like I'm talking  
6 hundreds of pages of documents where there is written  
7 opinions and whatnot. And, you know, if the plaintiff  
8 has any of that in her possession --

9 THE COURT: The written opinion --

10 MR. BLUMETTI: The written opinions underlying  
11 the decision on the injunction. It wasn't just a final  
12 piece of paper that says --

13 THE COURT: Well if there is a written  
14 decision, because normally on an order to show cause  
15 there will be a preliminary, a temporary --

16 MR. BLUMETTI: Yes.

17 THE COURT: And the briefing and then a  
18 preliminary leading to a permanent injunction.

19 MR. BLUMETTI: And that's what I understand  
20 happened here.

21 THE COURT: If there was a permanent  
22 injunction and there was a decision on that, that is  
23 what I'm ordering to be produced.

24 MR. BLUMETTI: Understood.

25 THE COURT: I don't think that it's necessary

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to produce all of the preliminary stuff or the briefing, I don't think that that's necessary. Of course, plaintiff can if you want to do that, but all I'm ordering is the final disposition which would be whatever is the final injunction.

MR. KIRSCHBAUM: Your Honor, I just want to clarify, Mr. Blumetti indicates he looked at the Court's electronic docket and I, as far as I know from talking to the plaintiff, she has not seen any of these documents, she's seen the final order.

THE COURT: Um-hmm.

MR. KIRSCHBAUM: So to the extent, similar to Mr. Blumetti, I'm not familiar with how their electronic dockets work, if those --

THE COURT: This is a Florida court.

MR. KIRSCHBAUM: If the documents are available on the docket I don't, it seems like redundant and overkill to make us produce them a second time.

THE COURT: So what I'm hearing is they're not.

MR. BLUMETTI: They're not available.

MR. KIRSCHBAUM: Okay, I mean I will produce whatever is in plaintiff's possession, that's all I can

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2 really do.

3 THE COURT: Well she can obtain her own  
4 records from the Court, she can obtain the final  
5 disposition and any written rationale for any  
6 injunction, permanent, temporary or preliminary. And  
7 defendant should produce any documents that they're,  
8 that they referenced related to this. My order does  
9 not preclude defendants from reaching out to the  
10 counterparty to that action.

11 MR. BLUMETTI: Understood.

12 THE COURT: Okay, any other items that the  
13 defendant is seeking?

14 MR. BLUMETTI: The last item pertains to  
15 damages, Judge, that would be the scope of the  
16 documents we were seeking. The demand for  
17 authorizations asked plaintiff to provide a HIPAA  
18 complaint authorization to obtain her medical records  
19 from any health care providers with whom she treated  
20 for any alleged physical, mental or emotional injuries  
21 related to this action.

22 Plaintiff responded that she has not sought or  
23 received any form of mental health care or treatment  
24 since 2016, nor has she sought or received any form of  
25 physical, mental or emotional injuries related to this

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2 action. The only problem with that is, Judge, it's  
3 directly contrary to what her predecessor counsel's  
4 representations to our firm were, that she did, in  
5 fact, receive extensive mental health treatment because  
6 of the defendants' alleged conduct and that her damages  
7 in this case are not limited to garden variety  
8 emotional distress. You know, these assertions are  
9 also inconsistent with plaintiff's representation in  
10 her interrogatories that she's seeking at least \$20  
11 million for alleged emotional distress which is  
12 obviously at odds with Second Circuit law as well as  
13 garden variety damage reports go.

14           So we have asked plaintiff to stipulate or  
15 confirm in writing that she is not seeking damages for  
16 anything more than garden variety emotional distress or  
17 we should get her records, she can't have it both ways.  
18 So if she didn't, in fact, treat, then she should  
19 stipulate to garden variety emotional distress. If she  
20 did, in fact, treat, we're entitled to all those  
21 records.

22           THE COURT: What is plaintiff's position on  
23 this?

24           MR. KIRSCHBAUM: Your Honor, as discussed  
25 briefly back in your room, we are, I don't know who

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2 said that plaintiff had treated. She has assured me she  
3 did not.

4 THE COURT: Okay.

5 MR. KIRSCHBAUM: And I think we discussed  
6 that.

7 THE COURT: Um-hmm.

8 MR. KIRSCHBAUM: So I, and again, I realize  
9 that technically limits us to what's called garden  
10 variety emotional distress, I don't agree that it's the  
11 de minimis --

12 THE COURT: Sure, the jury decides, what the  
13 stipulation normally the parties enter into when  
14 plaintiffs sometimes decide to do this because they  
15 don't want to produce mental health records if they  
16 were treated and that's, that is, that can be done. And  
17 so normally the stipulation is simply in this action  
18 the plaintiff is seeking so-called garden variety  
19 emotional distress damages and then the jury will  
20 ultimately decide that amount and the range varies and  
21 the jury will ultimately decide that typically based on  
22 the plaintiff's own testimony.

23 MR. BLUMETTI: And given the massive  
24 discordance in this case thus far about this large  
25 damages issue, we would ask that the Court order the

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parties to stipulate that plaintiff is seeking garden variety emotional distress.

THE COURT: Well it sounds like, it sounds like plaintiff's counsel is willing to do that, is that correct?

MR. KIRSCHBAUM: Correct.

THE COURT: All right --

MR. BLUMETTI: Okay, that was, that was something more than I had heard.

THE COURT: So I think that, why don't you just enter into that stipulation or if you want to do that on the record you can order a transcript, what I've heard is you're willing to stipulate that she is seeking garden variety damages and, therefore, there will not be any psychological records and, in fact, she did not seek any psychological treatment is what is what I've heard. Is that correct?

MR. KIRSCHBAUM: That is correct.

MR. BLUMETTI: Defendants would prefer to put that on the record now, Judge --

THE COURT: I've just done that.

MR. BLUMETTI: Oh, okay.

THE COURT: I've just confirmed it with plaintiff's counsel.

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MR. BLUMETTI: Understood.

THE COURT: Okay, so we're talking about garden variety and you can argue what that means. Okay, anything else that defendant is seeking?

MR. BLUMETTI: That is all, Judge.

THE COURT: Okay, so I think that the remaining issue from plaintiff was this protective order, hang on here. Is there anything more that you want, is there an application that you're making with respect to that protective order right now?

MR. KIRSCHBAUM: I would, you know, this is a new situation for me, I'm not quite sure how to proceed. I would say ideally, yes, I would ask that --

THE COURT: I mean if there's, if there is going to be a motion for sanctions for violation of a protective order, that's normally what happens. It's unusual to have those motions but I have had them in the past, there has to be an evidentiary basis for that. But I haven't heard what the evidentiary basis is for that motion.

MR. KIRSCHBAUM: Your Honor, I have no solid evidence which is why I would prefer to have Mr. Blumetti simply sign off that in writing that nothing will be shown to Boris Epshteyn and that would resolve

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this.

THE COURT: Can the defendant make that representation?

MR. BLUMETTI: I can say that I, personally, and my firm, have not shared any documents with Boris Epshteyn, nor have we spoken to him in any capacity in connection with this case. I have informed Mr. Kirschbaum that should any documents be shared with him, which I have no inclination to do anyway, we would comply with the Judge's Exhibit A that's attached to the confidentiality stip that would make him also subject to the confidentiality stipulation.

THE COURT: Is he somebody who would fall within the category of persons who could be shown documents?

MR. BLUMETTI: I understand that he's an attorney that does some work for the campaign as it currently exists now. So I can't see why we would be prohibited just by nature of, you know, plaintiff's animosity towards him from every sharing anything. But, again, I have, I have not shared anything, I have no inclination to share anything, and if I were to share anything it would be subject to the rules of the confidentiality stip as they currently exist.



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THE COURT: Are you aware of any of the individual parties sharing any confidential information with Mr. Epshteyn without him having signed off on the required confidentiality form?

MR. BLUMETTI: Absolutely. I, in fact, I have not even shown an of the individual defendants any documents that have been produced by either side in this case, so they wouldn't even have any documents to show him.

THE COURT: Okay, well what I'd like you to do is just do a follow-up conversation after this conversation --

MR. BLUMETTI: Okay.

THE COURT: Just to confirm that is the case.

MR. BLUMETTI: Okay.

THE COURT: And if there's some reason that Mr. Epshteyn needs to be shown documents it has to be in compliance with the protective order in this case.

MR. BLUMETTI: Which we would always comply with, Judge.

MR. KIRSCHBAUM: Judge, just to confirm, the follow-up conversation is between Mr. Blumetti and the individual defendants?

THE COURT: Yes. Yes.

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MR. KIRSCHBAUM: Just making sure I understood.

THE COURT: Yes. Okay, so I think that, I've now addressed the parties' outstanding document issues, let's talk about the depositions that are happening. What are the depositions that plaintiff is going to take, the individual defendants?

MR. KIRSCHBAUM: At least, Your Honor.

THE COURT: Okay. And who else?

MR. KIRSCHBAUM: I did provide a list at some point, and I would want to confirm with my client, but I think any of the individual custodians listed on our document requests as a starting --

THE COURT: Well there's a limit of ten

MR. KIRSCHBAUM: Then we'll narrow it to ten.

THE COURT: Right?

MR. KIRSCHBAUM: True.

THE COURT: Unless the parties stipulate to more.

MR. KIRSCHBAUM: I can only assume that the defendants will not stipulate thusly.

THE COURT: And in that case there would have to be an application for good cause, but I'm not inclined to extend that number absent a compelling

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reason. So can you, can you locate that, the list, I just want to --

MR. KIRSCHBAUM: Yes, Your Honor. It's not counting the plaintiff, in terms of custodian it's 21 people. So I will work with the plaintiff to narrow it to --

THE COURT: Yes, you can't take 21 depositions in this case.

MR. KIRSCHBAUM: I would not imagine I could.

THE COURT: I mean that's class action level.

MR. BLUMETTI: I would note that the campaign entity will be on the individual defendants that I represent, currently has essentially one employee. So to the extent all these nonparties, it's going to have to be subpoenas, I don't have any of these people under my possession, custody or control.

THE COURT: Okay, so who is working for the campaign now, there is only one employee?

MR. BLUMETTI: I understand that the 2016 campaign entity is limited to an individual named Bradley Crepe (phonetic) who is the treasurer, he didn't have any involvement with any of the allegations of this case. I certainly have Mr. Priebus and Mr. Spicer under my control and they will be produced

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obviously --

THE COURT: What about Bannon?

MR. BLUMETTI: He is not represented by my firm, he's never appeared in this case, I don't believe plaintiff has ever sought a default against him, I don't know about Mr. Bannon.

THE COURT: Okay.

MR. KIRSCHBAUM: We just can't find him, Your Honor, apparently he hides from the process servers.

THE COURT: Okay. So are you intending to serve a 30(b)(6) deposition notice?

MR. KIRSCHBAUM: I don't currently intend to, Your Honor, I don't think that's going to be -- I guess I will confirm that once more to be sure but I wasn't planning to do that.

THE COURT: Okay. So from the defendant's standpoint I'm hearing plaintiff's deposition, any other depositions?

MR. BLUMETTI: That's all I've, you know, identified as of right now. I'm sure that we're probably going to join in on some of the depositions identified by the plaintiff in her Rule 26 disclosures but, you know, that's the first one, we need to get the plaintiff --

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THE COURT: So nonparty --

MR. BLUMETTI: Right, it would necessarily nonparties, right. And I'm sure that we're certainly going to be questioning some of the eight nonparties that, you know, plaintiff might be subpoenaing as well.

THE COURT: Okay. I'm not going to extend the overall deadline for the case, the overall deadline is the March 31<sup>st</sup>, I'll allow you to take fact depositions through March 31<sup>st</sup>. If there is going to be an expert, it sounds like if you're stipulating to garden variety there doesn't need to be any medical testimony.

MR. KIRSCHBAUM: Well in our experience, Your Honor, we still need an expert, psychological, to vouch for the plaintiff's, the extent of the garden variety damages to support a high end verdict.

THE COURT: So is she going to submit to a medical examination then because we'll want, I'm --

MR. KIRSCHBAUM: If necessary, or a psych examination.

THE COURT: Okay. So the report, any expert report by the plaintiff needs to be produced by February 10<sup>th</sup>, any rebuttal expert report needs to be produced by March 17<sup>th</sup>. If the defendant might decide you don't want to have a rebuttal expert, sometimes

1  
2 that happens, sometimes the defendant just cross  
3 examines the plaintiff's expert, but any rebuttal  
4 report is due March 17<sup>th</sup>, any expert depositions have to  
5 be completed by March 31<sup>st</sup>. I am going to schedule a  
6 conference for February 7<sup>th</sup> at 3:00.

7 MR. BLUMETTI: Sorry, Your Honor, what time  
8 was that?

9 THE COURT: 3 p.m., Chris, that works?

10 THE CLERK: That works.

11 THE COURT: Yes, okay, 3 p.m. February 7<sup>th</sup>. By  
12 that date, so any documents that I've asked, directed  
13 to be produced should be produced within a week of  
14 today, by February 7<sup>th</sup> I expect that plaintiff's  
15 deposition will have been taken and my expectation is  
16 that you will have already served subpoenas on any  
17 nonparties that the campaign doesn't have any control  
18 over for who you, because you've got to schedule them,  
19 it's going to take time. And if they're not located in  
20 the state you may have to implement process, you know,  
21 outside of the state, okay? So that takes some time. So  
22 I'm going to expect that by February 7<sup>th</sup> you will have  
23 done what you needed to do to serve any nonparty  
24 subpoenas. I also expect that there will be dates on  
25 the calendar for the represented individual defendants.

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MR. BLUMETTI: Of course.

THE COURT: And my expectation is that the individual defendants will make themselves available for deposition in February.

MR. BLUMETTI: Okay.

THE COURT: And the parties can agree, of course, if they wish to do those by video or in person, it's up to you. I have, if you don't have a video protocol and you expect any of the depositions to be by video, I have a sample video deposition protocol. Everybody's expert by now in this, nobody ever wanted to do it remotely pre-pandemic, now everybody likes to do it remotely.

MR. BLUMETTI: I made a similar comment yesterday, it's funny you should say that.

THE COURT: They were always allowed but it took a pandemic to push people to learn how to do it. Well I guess there was new technology in the platforms.

MR. BLUMETTI: It's much easier now.

THE COURT: Yes. Yes, so I have a sample protocol, obviously you can change it if you have other, you know, provisions that you want, but I offer it to you just so that you don't have to spend a lot of time on a protocol.

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Are there any other items that plaintiff's counsel would like to raise today?

MR. KIRSCHBAUM: I don't believe so, Your Honor.

THE COURT: Okay. Any other issues from defense counsel?

MR. BLUMETTI: No, Judge.

THE COURT: All right, I want to thank both of you for participating in today's settlement conference, I'm sorry that we didn't get to a resolution, but I'm going to keep close tabs on discovery so that you do complete it, timely complete it because the case has been going on for a long time and all sides need a resolution, okay?

MR. BLUMETTI: Understood.

THE COURT: All right, thank you.

MR. BLUMETTI: Have a wonderful day, Judge.

THE COURT: You, too, bye-bye.

(Whereupon, the matter is adjourned.)



C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Delgado versus Donald J. Trump for President, Inc., et al., Docket #19cv11764, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature: Carole Ludwig

CAROLE LUDWIG

Date: January 26, 2023